

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 110 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

ARVIND MILLS LIMITED

Appearance:

MR P.G.DESAI WITH MANISH R BHATT for Petitioner
MR MANISH J SHAH WITH JP.SHAH for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 24/06/98

ORAL JUDGEMENT (Per C.K.Thakker, J)

The following question is referred for the opinion of this Court.

"Whether on the facts and in the circumstances of the case the assessee is entitled to allowance in respect of Tebilized royalty paid to Meetur Beardsell Ltd. amounting to Rs.2,50,890/- as claimed? "

2. In connection with the assessment year 1979-80, the claim made by the assessee for deduction of royalty to M/s.Meetur Beardsell Ltd. amounting to Rs.2,50,890/was disallowed. Being aggrieved by the said order an appeal was filed. The Commissioner allowed the appeal relying on the decision in the case of Ashoka Mills, ITAT. The Tribunal also confirmed the said order.

3. Now so far as Ashoka Mills is concerned, the matter reached this Court and in Commissioner of Income Tax V. Ashoka Mills Ltd; 218 ITR 527, this Court held that payment of royalty for an agreement for use of trade mark can be said to be revenue expenditure. It was observed that an agreement permitting the assessee to make use of a parituclar process and the trade mark did not create any asset or right of a permanent nature in favour of assessee. Such agreement merely enables the assessee to confer the advantage of quality and marketibility. The payment of royalty is, therefore, clearly in the course of profit earning process and not for acquisition of assets or right of a permanent character. According to the Court, therefore, the amount of royalty paid by the assessee was for improvement of the operation of this existing business and it is efficiency and profitability and must be held to be in the nature of revenue expenditure which was required to be allowed to be deducted as such.

4. The ratio laid down in Ashoka Mills Ltd. has been recently reiterated by this Court in Commissioner of Income Tax Vs Raipur Manufacturing Co.; 231 ITR 598. Almost in similar circumstances the question was answered in favour of the assessee and against the Revenue.

5. In our opinion, the question is finally concluded by the above two judgement of this court and hence the question requires to be decided in the negative i.e. against the Revenue and in favour of the assessee. The reference is accordingly disposed of. In the facts and circumstances of the case, no order as to costs.

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